

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 291 of 2005

Between:

- 1 Dontuluri Jadasam, S/o. Yelamanda,
R/o. Vinukonda, Guntur District.
- 2 Donturluri Yacobe, S/o. Yelamanda,
R/o. Vinukonda, Guntur District.
- 3 Gali Kiran Kumar, S/o. Ramayya,
R/o. Vinukonda, Guntur District.
- 4 Gali Ezra, S/o. Nandanam,
R/o. Vinukonda, Guntur District.
- 5 Ketupalli Chandrayya, S/o. John,
R/o. Vinukonda, Guntur District.
- 6 Patra Pedalajar, S/o. Yohan,
R/o. Vinukonda, Guntur District.
- 7 Nelapatla Peda Somanath, S/o. Lajar,
R/o. Vinukonda, Guntur District.
- 8 Pottepogu Subbaiah, S/o. Soheb,
R/o. Vinukonda, Guntur District.
- 9 Pottepogu Ramaswamy, S/o. Soheb,
R/o. Vinukonda, Guntur District.
- 10 Pottepogu Pitchayya, S/o. Soheb,
R/o. Vinukonda, Guntur District.
- 11 Pottepogu Adamu, S/o. Poul,
R/o. Vinukonda, Guntur District.
- 12 Pottepogu Yesu, S/o. Poul,
R/o. Vinukonda, Guntur District.
- 13 Pottepogu Yesu, S/o. Chinna Venktaraman,
R/o. Vinukonda, Guntur District.
- 14 Pottepogu Naasayya, S/o. Chinna Venktaraman,
R/o. Vinukonda, Guntur District.
- 15 Tanikonda Bhaskar Rao, S/o. Daveedu,
R/o. Vinukonda, Guntur District.
- 16 Tanikonda Kotesu, S/o. Prabhu Das,
R/o. Vinukonda, Guntur District.

- 17 Nelapatla Yesu, S/o. Trimurthulu,
R/o. Vinukonda, Guntur District.
- 18 Nelapatla Kotayya, S/o. Mallaiah,
R/o. Vinukonda, Guntur District.
- 19 Manda Venkatrao, S/o. Pitchi Perayya,
R/o. Vinukonda, Guntur District.
- 20 Amrutha Pudi, S/o. Guravaiah,
R/o. Vinukonda, Guntur District.
- 21 Patra Chinna Lajar, S/o. Yohan,
R/o. Vinukonda, Guntur District.
- 22 Gali Chinna Ramayya, S/o. Yelamandal,
R/o. Vinukonda, Guntur District.
- 23 Gali Chinna Venkateswarlu, S/o. Pedda Yelamanda,
R/o. Vinukonda, Guntur District.
- 24 Dontaluri John, S/o. Yelamandal,
R/o. Vinukonda, Guntur District.
- 25 Tanikonda Koteswar Rao, S/o. Ananda Rao,
R/o. Vinukonda, Guntur District.
- 26 Yerraguntla Gebreal, S/o. Aadamu,
R/o. Vinukonda, Guntur District.
- 27 Gali Isaq, S/o. Vandanam,
R/o. Vinukonda, Guntur District.
- 28 Gali Ramesh, S/o. Ramaiah,
R/o. Vinukonda, Guntur District.
- 29 Gali Guravaiah, S/o. Pedda Yelamanda,
R/o. Vinukonda, Guntur District.
- 30 Monula Kotaiah, S/o. Abharam,
R/o. Vinukonda, Guntur District.
- 31 Pottepogu Ezra, S/o. Chinna Venkatramaiah,
R/o. Vinukonda, Guntur District.
- 32 Yerraguntla Mariaya Das, S/o. Das,
R/o. Vinukonda, Guntur District.
- 33 Pottepogu Veeraiah, S/o. Chinna Venkatramaiah,
R/o. Vinukonda, Guntur District.
- 34 Pottepogu Mariya Babu, S/o. Yacob,
R/o. Vinukonda, Guntur District.
- 35 Bhogiri Rambabu, S/o. Venkateswarlu,
R/o. Vinukonda, Guntur District.
- 36 Bhogiri Sreenu, S/o. Venkateswarlu,
R/o. Vinukonda, Guntur District.
- 37 Bhogiri Venkatrao, S/o. Venkateswarlu,
R/o. Vinukonda, Guntur District.
- 38 Vulava Kondaiah, S/o. Papayya,
R/o. Vinukonda, Guntur District.
- 39 Madigani Nageswar Rao, S/o. Pedaulaiah,
R/o. Vinukonda, Guntur District.
- 40 Angadi Daveedu, S/o. Yohan,
R/o. Vinukonda, Guntur District.

..... PETITIONERS

AND

- 1 The District Collector, Guntur District, Guntur.
- 2 Commissioner of Fisheries, Matsya Bhavan,
Shanthi Nagar, Vijayanagar Colony, Hyderabad.
- 3 Assistant Director of Fisheries, Guntur, Guntur District.
- 4 Fishermen Cooperative Society, Rep. by its President,
Madigani Chinnapullaiah, Vinukonda, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not allowing us to catch the fish the tanks of FCS, Nadigadda (4th respondent society) as if we were removed from the primary membership of the society as bad, arbitrary and contrary to the provisions of APCS Act 1964 and also offends Arts.14, 19 and 21 of the Constitution of India apart from violation of principles of natural justice and pass such other order or orders

Counsel for the Petitioner:MS.M.VIDYAVATHI

Counsel for the Respondents 1 TO 3: GP FOR FISHERIES

Counsel for the Respondent No.4: Mr. Ramesh Ranganadhan

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 291 of 2005

ORDER:

The writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in not allowing the petitioners to catch the fish in the tanks of FCS, Nadigadda (4th respondent society) as if they were removed from the primary membership of the society as bad, arbitrary and contrary to the provisions of APCS Act 1964.

According to the petitioners, the 4th respondent society is in existence with 253 members and they are admitted as members

of the society after following the due procedure as contemplated under the A.P. Cooperative Societies Act, 1964 and the bye-laws made there under through a resolution dated 14.3.1995. It is the further contention of the petitioners that they were admitted as members after conducting skill test etc. and they are the members of the society since 1995. The elections were held to the society on 23.7.2002 as per the procedure prescribed under the A.P. Cooperative Societies Rules 1964 and one Madigani Chinna Pullaiah was elected as President of the Society. But, there were some allegations against the President which were virtually against the object of the cooperative movement of the society. As a matter of fact the 3rd respondent accorded permission to admit the petitioners vide proceedings in Memo No.1467/C/95 dated 16.5.1995. In view of the dispute against the 4th respondent society, the President of the Society seems to have taken revenge and removed the petitioners from the primary membership of the society and stopped them from entering into the tank without any notice and procedure to be followed as contemplated under the Act. Hence the present writ petition.

The President of the 4th respondent society filed counter affidavit stating that he was duly elected President of the Fisherman Cooperative Society, Nadigadda having been unanimously elected on 23.7.2002 for a term of five years. One D. James filed W.P. 20811 of 2004 challenging the order of the Asst. Director, Fisheries dated 4.11.2004 in holding that his removal as President was bad in law and in directing that he should act as the President of the Society, for which the 4th respondent filed counter. No interim orders have been passed in the said writ petition. The allegation that the petitioners were admitted as members is false. D. James, taking advantage of his position, fabricated the records. The petitioners were never the members of the 4th respondent society. The counter affidavit filed by the Asst. Director of Fisheries in W.P. 20811 of 2004 clearly states that the proceedings dated 16.5.1995 is fabricated and therefore Section 21(3) of the A.P. Cooperative Societies Act has no application and hence the writ petition is devoid of merit.

Though several contentions were raised in the affidavit in support of the writ petition and the counters filed by respondents 1 to 4, learned counsel for the petitioners confined her arguments only with regard to non-observance of Section 21(3) of the Act. The contention of the learned counsel for the petitioner Ms. Vidyavathi is that without any notice the petitioners were removed from the primary membership of the 4th respondent society and therefore the respondents violated the principles of natural justice.

On the other hand, the learned counsel for the respondents contended that since the petitioners were never admitted as members of the 4th respondent society, the question of giving any notice to the petitioners does not arise and hence the writ petition is devoid of merit and liable to be dismissed.

It is not disputed before this court that as per the bye-laws of the Cooperative Societies, the Government issued instructions to amend the bye-laws empowering only such persons certified by the Assistant Director of Fisheries Department as possessing requisite fishing skills as eligible for being admitted as members of the society. According to the petitioners, they were admitted as members in pursuance of the proceedings of the Asst. Director of Fisheries dated 16.5.1995. As per this proceedings, that in view of the circumstances explained by the President, Fisherman Cooperative Society, Nadigadda and in view of the proposals sent by the Inspector of Fisheries, Vinukonda and the reference 4th cited (I.F., Vinukonda, Lr.No.Coops/95 dated 10.5.1995), permission is accorded to admit 87 members into the Fishermen Cooperative Society, Nadigadda. As per the copy of the resolution dated 14.3.1995, the members of the society resolved unanimously to admit certain members as the members of the society.

Section 21(3) of the Act reads as follows:

“Where any person, who is not eligible for being admitted as member has been

admitted as member or where the member who is disqualified to continue as such under sub-section (1) is continued as member, he shall be removed by the general body on its own motion or on a representation made to it by any member of a society or its federal society or its financing bank:

Provided that no member shall be removed under this sub-section unless he had an opportunity of making a representation against the proposed action. A copy of the resolution removing the member shall be communicated to such person and on such communication, he shall be deemed to have ceased to be a member of the society”.

A perusal of the proviso to the above section clearly shows that unless an opportunity is given to the members, they cannot be removed from the primary membership of the society. Now the question is whether Section 21(3) of the Act applies to the petitioners' case.

The document on which the petitioners strongly relied upon to show that they were admitted into the 4th respondent society is the proceedings of the 3rd respondent dated 16.5.1995. The 3rd respondent filed counter affidavit in W.P. 20811 of 2004 stating that the proceedings dated 16.5.1995 on which the petitioners rely upon is a fabricated document and therefore the petitioners were not admitted into the 4th respondent society.

As rightly pointed out by the learned senior counsel Mr. Ramesh Ranganathan, appearing for the 4th respondent, Section 21(3) of the Act applies only in case of admission of ineligible members and inasmuch as the petitioners were never admitted as members of the 4th respondent society, Section 21(3) of the Act has no application. The document on which the petitioners rely upon is

under cloud because according to the 3rd respondent it is a fabricated document. Such is the case, the petitioners cannot be said to have been admitted as members of the 4th respondent society. Having come to the court, it is for the petitioners to establish that they were admitted as members of the 4th respondent society in pursuance of due procedure as contemplated under the Act and the Rules made there under.

It is also the case of the 4th respondent that the petitioners herein were never the members of the 4th respondent society and the copy of the alleged minutes dated 14.3.1995 passed by the society is also a fabricated document. Therefore, there are serious disputed questions of fact involved in this writ petition and the same cannot be decided by this court and the remedy is elsewhere.

Learned counsel for the respondent No.4 placed reliance on a decision in **Convention of Baptist Churches of Northern of Northern Circars (CBCNC) v. State of A.P.** for the proposition that when the petitioners have not approached the court with clean hands and have misrepresented the facts with ulterior motive, they are not entitled to any relief under Article 226. For the same proposition, he relied upon a decision in **V. Venkata Rao v. Dy. Transport Commissioner and Secretary, Kakinada** wherein a learned single Judge of this court held that it is well settled in law that the relief under Section 226 of the Constitution of India is discretionary and the petitioners who approach the High Court for such relief must come with frank and full disclosure of the facts and if an attempt is made to suppress the material facts, the application is liable to be dismissed only on that ground notwithstanding the merits of the claim. For the same proposition, he also relied upon a decision in **Kambham Raja Reddy and others v. Government of A.P.** wherein it is held that the party invoking the extraordinary jurisdiction of this court is supposed to be truthful disclosing only material facts.

There is no doubt about the proposition of law laid down by this court in the aforementioned decisions. But, without expressing

any opinion with regard to the aspect that the petitioners have not come to the court with clean hands or about suppression of certain facts so as to mislead this court, I am of the considered opinion that the petitioners did not make out a prima facie case to issue a writ of Mandamus to the respondents. Whether the petitioners are members of the 4th respondent society or not is a serious dispute. Unless that dispute is resolved, the petitioners are not entitled to catch the fish in the tank of the 4th respondent society. The document on which the petitioners rely upon is under cloud. Therefore, the petitioners are not entitled for any relief as sought for.

The writ petition is devoid of merit and accordingly it is dismissed.

K.C. Bhanu, J.

Date: --03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The District Collector, Guntur District, Guntur.
- 2 Commissioner of Fisheries, Matsya Bhavan,
Shanthi Nagar, Vijayanagar Colony, Hyderabad.
- 3 Assistant Director of Fisheries, Guntur, Guntur District.
- 4 The President, Fishermen Cooperative Society,
Madigani Chinnapullaiah, Vinukonda, Guntur District.
5. Two C.Cs. to the G.P. for Fisheries, High Court Buildings, Hyderabad (OUT).
6. 2 CD copies.